JAN 6 1970
JOHN F. DAVIS, CLERK

No. 888

In the Supreme Court of the United States

OCTOBER TERM, 1969

THOMAS EDWARD HANLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 888

THOMAS EDWARD HANLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted in the United States District Court for the Southern District of Florida on six counts charging violations of 18 U.S.C. 1952, by the use of the mails in the promotion of a gambling activity. He was sentenced to nine months' imprisonment on count one, a fine of $10,000 on each of two counts, and to three years' probation on the remaining counts. The court of appeals affirmed (Pet. App.).

The evidence showed that petitioner was the owner of a restaurant in Marathon, Florida, on the second floor of which a gambling operation had been conducted for several years (Tr. 638, 696). Petitioner

372-834—70

guided patrons of his restaurant to the upstairs gambling area, where they engaged in a dice game (Tr. 573, 650). He customarily approved the acceptance of personal checks from the gambling patrons, which were made out in nearly every instance to "cash" (Tr. 575). Collection on these checks was then attempted through the services of the First National Bank of Homestead, Florida (Tr. 653, 666).

Mrs. Martin, the vice-president of the bank for collection, testified that she received petitioner's checks through the mail or from the president of the bank; in some instances they were left on her desk in an envelope (Tr. 402). When a check was presented for collection, Mrs. Martin filled out a standard, prenumbered collection form which called for various items of information, including the name of the person presenting the check, date of presentment, date of the item, and special instructions. One duplicate copy of the form would then be forwarded with the check to the drawee bank. If the check were honored, the Homestead Bank would receive a cashier's check, which it would cash and turn over the proceeds to the person presenting the check, after deducting a service charge (Tr. 303).

With respect to petitioner's checks, however, the name of the person presenting the check was not inserted in the appropriate blank, and the collection slips were forwarded immediately to the drawee bank by air mail. In the Special Instructions blank, Mrs. Martin inserted the following instruction: "Please

wire fate[1] immediately. Mrs. Martin, Vice President. T.H." The "T.H.", according to Mrs. Martin, designated petitioner, Thomas Hanley, as the person who presented the check for collection (Tr. 460–461). She explained that "In order for me to put the initials on there, they either had to come in the envelope, like I said, or I was told that they belonged to him or that he had brought them in to be sent" (Tr. 462). This particular procedure had been employed for the collection of petitioner's "cash" checks for "probably ten years" (Tr. 393).

Petitioner contends that it was error to admit the collection slips with the initials "T.H." thereon as business records under 28 U.S.C. 1732. The collection slips, however, clearly met the requirements of the statute as the court of appeals held in its thorough discussion of the issue, on which we rely.

The testimony showed that in the ordinary course of its business, the Homestead Bank routinely participated in collection services for a fee. In order to record these transactions, routine entries, including petitioner's initials at issue in this case, were made on pre-numbered, multiple copy forms by an authorized person with information known to her or supplied to her by another authorized person, the bank president. The entries were made within a reasonable time after

[1] The "wire fate" instruction meant that the drawee bank was to notify the Homestead Bank by telegraph whether or not payment had been stopped. If the check was honored, the proceeds from the drawee bank's cashier's check were than put into a sealed envelope and given to Mr. Losner, the bank president, who would give it to petitioner or one of his employees (Tr. 654–656).

presentment, and, thereafter, contemporaneously with each act, occurrence, or event arising during the collection process. Section 1732 requires nothing more to establish their trustworthiness, and consequently, their admissibility in evidence. As the court of appeals observed, Mrs. Martin's alleged lack of personal knowledge as to whether Hanley or his agent left the checks for collection "affects the weight only and not the admissibility of the collection slips" (Pet. App. 16).[2]

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1970.

---

[2] The second paragraph of 28 U.S.C. 1732(a) provides:

* * * * * *

"All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility."